

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAINBOW BUSINESS SOLUTIONS, doing  
business as PRECISION TUNE AUTO  
CARE; DIETZ TOWING, INC.; THE  
ROSE DRESS, INC.; VOLKER VON  
GLASENAPP; JERRY SU; VERENA  
BAUMGARTNER; TERRY JORDAN; ERIN  
CAMPBELL; and LEWIS BAE,

Plaintiffs,

v.

MERCHANT SERVICES, INC.; NATIONAL  
PAYMENT PROCESSING; UNIVERSAL  
MERCHANT SERVICES LLC; UNIVERSAL  
CARD, INC.; JASON MOORE; NATHAN  
JURCZYK; ROBERT PARISI; ERIC  
MADURA; FIONA WALSH; ALICYN ROY;  
MBF LEASING LLC; NORTHERN  
FUNDING, LLC; NORTHERN LEASING  
SYSTEMS, INC.; JAY COHEN; LEONARD  
MEZEI; SARA KRIEGER; SAM BUONO;  
and SKS ASSOCIATES, LLC,

Defendants.

No. C 10-1993 CW

ORDER GRANTING  
PLAINTIFF ERIN  
CAMPBELL'S MOTION  
FOR  
RECONSIDERATION  
(Docket No. 584)

On February 7, 2014, the Court granted Plaintiff Erin  
Campbell's motion for leave to file a motion for reconsideration  
of its order granting in part Plaintiffs' motion for class  
certification. Plaintiff Campbell seeks reconsideration of the  
Court's denial of certification of a nationwide SKS Post-Lease  
Expiration class to pursue Racketeer Influenced and Corrupt  
Organizations Act (RICO) and RICO conspiracy claims. Leasing

1 Defendants oppose the motion. Having considered the parties'  
2 papers and the record in the case, the Court GRANTS Plaintiff  
3 Campbell's motion for reconsideration and CERTIFIES the nationwide  
4 SKS Post-Lease Expiration class to pursue RICO and RICO conspiracy  
5 claims.

#### 6 DISCUSSION

##### 7 I. Commonality and Predominance

8 In its original order denying certification of the SKS Post-  
9 Lease Expiration class, the Court found that Plaintiff Campbell  
10 failed to establish that common issues of law and fact predominate  
11 with respect to her alleged RICO and RICO conspiracy claims. The  
12 Court based this finding on its commonality and predominance  
13 analysis for the Excessive Lease Amount class. However, as  
14 Plaintiff Campbell points out in her motion for reconsideration,  
15 the factual basis for the SKS Post-Lease Expiration class's RICO  
16 claim is different than the Excessive Lease Amount class's RICO  
17 claim. Accordingly, the Court revisits its analysis of this  
18 issue.

19 Like Plaintiff Campbell's UCL claim on behalf of the SKS  
20 Post-Lease Expiration California subclass, Plaintiff Campbell's  
21 RICO and RICO conspiracy claims on behalf of the proposed SKS  
22 Post-Lease Expiration class are based on the theory that Leasing  
23 Defendants conspired with one another to defraud former lessees by  
24 collecting purported taxes that were not actually due or paid to  
25 any taxing authority. Plaintiff Campbell alleges that Leasing  
26 Defendants conducted a faulty simulation to determine how much to  
27 charge those former lessees and compiled the results on a  
28 spreadsheet referred to as Schedule 1. Plaintiff Campbell further

1 alleges that Leasing Defendants made or attempted to make  
2 unauthorized ACH deductions from merchants' bank accounts in their  
3 efforts to collect the purported taxes. Moreover, Plaintiff  
4 Campbell alleges that, in order to process those deductions,  
5 Leasing Defendants conspired to defraud the third-party ACH  
6 processors.

7 Leasing Defendants argue that Plaintiff Campbell has failed  
8 to "prove" reliance and proximate cause for the RICO claim.  
9 Leasing Defendants' Opposition at 5. However, at the class  
10 certification stage, Plaintiff Campbell need not prove reliance.  
11 Rather, Plaintiff Campbell must demonstrate that the RICO claim  
12 "depend[s] upon a common contention" that is "of such a nature  
13 that it is capable of classwide resolution--which means that  
14 determination of the truth or falsity will resolve an issue that  
15 is central to the validity of each one of the claims in one  
16 stroke." Wal-Mart, 131 S. Ct. at 2551. Here, Plaintiff  
17 Campbell's theory is that Leasing Defendants made fraudulent  
18 misrepresentations upon which the ACH processors relied when  
19 making or attempting to make deductions from the proposed class  
20 members' bank accounts. This allegation, whether true or false,  
21 will resolve the issue for the entire class. See Friedman v. 24  
22 Hour Fitness USA, Inc., 2009 U.S. Dist. LEXIS 81975, \*26 (C.D.  
23 Cal.) ("Because the injury to class members was inflicted  
24 automatically through electronic processes, as a result of the  
25 payment processors' reliance on the alleged misrepresentation, the  
26 proximate cause requirement is not a barrier to class treatment of  
27 the RICO claim.").

1 To the extent that Leasing Defendants contend that class  
2 certification is improper, because the facts presented by  
3 Plaintiff Campbell do not support her claim of fraudulent  
4 misrepresentation, the Court notes that Plaintiff Campbell has  
5 submitted a signed ACH processing agreement in which Defendant Jay  
6 Cohen affirmed that the ACH payments were authorized. *Simplicio*  
7 *Dec.*, *Ex. WWW*. That document provides, "Regulations governing  
8 origination of an ACH debit payment require that the Originator  
9 (You the Merchant) have and retain evidence that the Payer duly  
10 authorized the payment." *Id.* Leasing Defendants argue that the  
11 merchants' ACH forms and leases provided them with authorization  
12 to make these debits. However, whether these documents authorized  
13 debits after the leases expired is a disputed question of fact  
14 that is common to the proposed class.

15 The Court finds that common questions exist and predominate  
16 for Plaintiff Campbell's RICO claim on behalf of the proposed SKS  
17 Post-Lease Expiration class. These questions include the  
18 propriety of Leasing Defendants' simulation to determine whether  
19 taxes were due, whether class members' form ACH agreements  
20 authorized the deductions after their leases had expired and  
21 whether ACH processors relied on fraudulent misrepresentations by  
22 Leasing Defendants when they processed the debits.

## 23 II. Other Factors

### 24 A. Numerosity

25 The Court previously found that Plaintiff Campbell satisfied  
26 the numerosity requirement with respect to the SKS Post-Lease  
27 Expiration Class.  
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1           B.     Typicality

2           Leasing Defendants argue that Plaintiff Campbell's claim is  
3 not typical of the proposed class and she lacks standing to pursue  
4 a RICO claim because Leasing Defendants were not able to debit any  
5 taxes or fees from her bank account. However, a plaintiff who has  
6 suffered an injury to "business or property" caused by the  
7 racketeering conduct has standing to bring a racketeering claim.  
8 Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 495 (1984). Although  
9 Leasing Defendants were not able to deduct money from her bank  
10 account, Plaintiff Campbell alleges that, when she received the  
11 notice of debt from Leasing Defendants, she spent time away from  
12 her usual work and paid an assistant to help her research and  
13 compile financial records. This payment to an assistant is  
14 sufficient to establish a "concrete financial loss" for purposes  
15 of standing for the RICO claim. Oscar v. University Students Co-  
16 op Ass'n, 965 F.2d 783, 785 (9th Cir. 1992).

17           Leasing Defendants also argue that Plaintiff Campbell's  
18 decision to pay an assistant to compile her records defeats  
19 typicality because her damages are not similar to those of the  
20 bulk of class members. However, even if her damages differ from  
21 those of many class members, her RICO and UCL claims are identical  
22 to the class's. "Under Rule 23(a)(3) it is not necessary that all  
23 class members suffer the same injury as the class representative."  
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1 Lozano v. AT&T Wireless Servs., Inc., 504 F.3d 718, 734 (9th Cir.  
2 2007).<sup>1</sup>

3 The Court finds that Plaintiff Campbell has satisfied the  
4 typicality requirement with respect to the SKS Post-Lease  
5 Expiration class.

6 C. Adequacy

7 The Court previously found that Plaintiff Campbell met her  
8 burden on this prong.

9 D. Superiority

10 The Court finds that Plaintiff Campbell has satisfied the  
11 superiority prerequisite with respect to the SKS Post-Lease  
12 Expiration class's RICO and RICO conspiracy claims. The risks,  
13 small recovery, and relatively high costs of litigation here make  
14 it unlikely that individual merchants will pursue claims against  
15 Leasing Defendants independently. A class action, however, "would  
16 offer those with small claims the opportunity for meaningful  
17 redress." Sullivan v. Kelly Services, Inc., 268 F.R.D. 356, 365  
18 (N.D. Cal. 2010). In addition, a class action would more  
19 efficiently resolve the numerous legal and factual questions  
20 relevant to this class's claims against Leasing Defendants.

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22 <sup>1</sup> Leasing Defendants have also filed a motion for leave to  
23 file a motion for reconsideration of the Court's class  
24 certification order, making further arguments about the typicality  
25 of Plaintiff Campbell's injuries and also seeking reconsideration  
26 of the Court's certification of the Property Tax Equipment Cost  
27 Basis Class. Docket No. 587. To the extent the Court addresses  
28 the arguments Leasing Defendants raise in their motion for leave,  
the Court GRANTS the motion for leave to file a motion for  
reconsideration and DENIES the motion for reconsideration. In all  
other respects, the Court DENIES the motion for leave to file a  
motion for reconsideration.

1 Accordingly, the class action is superior to individual litigation  
2 for this class.

3 The Court certifies the SKS Post-Lease Expiration class to  
4 pursue its RICO and RICO conspiracy claims.

5 CONCLUSION

6 For the foregoing reasons, the Court GRANTS Plaintiff  
7 Campbell's motion for reconsideration and certifies the SKS Post-  
8 Lease Expiration Class, which is defined as: "All persons and  
9 businesses whose lease numbers appeared on Schedule 1" to pursue  
10 RICO and RICO conspiracy claims.

11 IT IS SO ORDERED.

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13 Dated: 3/17/2014

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15 CLAUDIA WILKEN  
16 United States District Judge  
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